

**IN THE HIGH COURT OF JUDICATURE OF ANDHRA PRADESH
AT HYDERABAD**

W.P.No. of 2009

Between:

1. The Govt. of A.P., rep. by its Prl.Secretary,
Commercial Tax Dept., Secretariat, Hyderabad.
2. The Commissioner of Commercial Taxes,
C.T. Complex, M.J.Road, Nampally, Hyderabad.
3. The Dy. Commissioner of Commercial Taxes,
Vijayawada-I Division, Vijayawada
4. The Dy. Commissioner of Commercial Taxe,
Vijayawada-II Division, Vijayawada.
5. The Commercial Tax Officer, Vuyyuru circle,
Vuyyuru, Krishna District.

..PETITIONERS

AND

P.Vijaya Babu, Occ: Junior Assistant,
(now removed from service),
O/o. Commercial Tax Officer, Vuyyru Circle,
Vuyyuru, Krishna District.

..RESPONDENT

A F F I D A V I T

I, , S/o. , aged ()

years, residing at Hyderabad, do hereby solemnly and sincerely affirm and state as follows:

1. I am working as -----, A.P., Hyderabad, the 1st petitioner herein and as such, I am well acquainted with the facts of the case. I am authorized to depose to this affidavit on behalf of the petitioners 2 to 5 herein as well.
2. I submit that the petitioners herein are seeking the issuance of "Writ of Certiorari" calling for the records relating to the order of the A.P.Administrative Tribunal passed in O.A.No. 5199 of 2006, dated: 05-11-2009, and quashing of the same as being perverse, in excess of jurisdiction and contrary to law.

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3. I submit that the respondent herein filed the above O.A., assailing the orders issued in G.O.Rt. No.2385, Revenue (Vig-I) Dept., dt. 07-11-2006 (dismissing the applicant from service) and for a consequential direction to the petitioners herein to reinstate him into service forthwith with all consequential benefits.

4. I submit that the Hon'ble Andhra Pradesh Administrative Tribunal by its order dt. 05-11-2009, allowed the O.A.No. 5199/2006, setting aside the orders issued in G.O.Rt.2385, Revenue (Vig-I) Dept., dt.07-11-2006, directing the petitioners herein to re-induct the respondent herein forthwith into service.

5. I crave the indulgence of this Hon'ble Court to treat the counter affidavit filed in O.A.No. 5199/06, as part of this affidavit.

6. I submit that the respondent herein, while working as Junior Assistant, O/o CTO, Sivalayam Street, (Vijayawada-I division) was trapped by the ACB officials on 25-11-1999 in his office, for demanding and accepting an amount of Rs. 1,500/- for doing an official favour in the issue of Registration Certificate under APGST Act.,1957. He was placed under suspension by the Deputy Commissioner, (CT), Vijayawada-I vide proceedings in Ref. A2/202/2000 dt. 25-01-2000 and was under suspension from 25-01-2000 to 23-09-2003. He was reinstated into service w.e.f. 24-09-2003 without prejudice to the outcome of the criminal case pending against him, as per Government Memo No. 86989/Vig.I(3)/1999-5, dated 10-09-2003.

7. I submit that the respondent herein was convicted under Sections 7 & 13 (1)(d) r/w 13 (2) of Prevention of Corruption Act, 1988 and

was sentenced to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs.10,000/- and, in default, to suffer simple imprisonment for three months, by the

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Special Judge for Special police enquiry and Anti Corruption Bureau Cases, Vijayawada on 4-7-2006, for demanding and accepting a bribe of Rs.1,500/- from Sri G.Venkatanaga Chandra Sekhar to issue Registration Certificate under the APGST Act to do business in Kirana and General Stores, at his residence. Thereupon the Accused Officer filed a Criminal appeal No.949/2006 in the Hon'ble High Court of Andhra Pradesh, Hyderabad against the judgment of the trial court and the Hon'ble High Court has passed the following interim order on 25-07-2006.

“ The sentence of imprisonment imposed on the Petitioner- applicant by the court below is suspended, by way of granting bail, on condition of the petitioner executing a personal bond in a sum of Rs.10,000/- (Rupees Ten Thousand only) with two sureties each for a like sum, to the satisfaction of the Court of the Special Judge for SPE and ACB Cases, Vijayawada”.

8. It is submitted that Sri. P.Vijaya Babu, Junior Assistant has displayed lack of devotion to duty and also failed to maintain absolute integrity, discipline, impartiality and displayed lack of sense of propriety thereby violating rule 3 (1) of APSCS (CC & A) Rules. He has also acted in a manner unbecoming of a Government servant and derogatory to the prestige of the Government and placed his position under embarrassment and thereby violated Rule 3 (2) and Rule 3 (3) of Conduct Rules.

9. I submit that as per G.O. Ms. No.2, General Administration (SER.C) Department dated 04-01-1999, the Government directed that in all proven cases of misappropriation, bribery, corruption etc, the penalty of dismissal from service shall be imposed under Rule 25(1) of A.P.C.S.(CC&A) Rules,

1991 and as such the penalty of dismissal from service was imposed on the ground of his conviction on a criminal case vide G.O. Rt.No.2385, Revenue (Vig.I) Department, dated 07-11-2006 by the Government.

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10. I submit that the Hon'ble High Court in Crl.Appeal No. 1099/06, has only suspended the sentence and not the conviction of the respondent herein and as such, the dismissal of the respondent herein basing on the judgment of the trial court convicting the respondent, is in accordance with the rules.

11. I submit that the Hon'ble Tribunal erred in setting aside the dismissal orders of the respondent herein and directing the petitioners herein to re-induct the respondent herein into service.

12. I submit that the Hon'ble Tribunal ought to have seen that Rule 25(1) of A.P.C.S.(CC&A) Rules, 1991, provides for exercising of powers to impose the penalty of dismissal from service on the ground which leads to conviction of Govt.servant on a criminal charge and as such, the action taken by the petitioners herein, is in accordance with rules.

13. I submit that the Hon'ble Tribunal ought to have seen that Rule 8(2)(b) of A.P.C.S.(CC&A) Rules, 1991, is applicable in the case where a Government servant is not dismissed or removed from service consequent to his conviction.

14. I submit that the Hon'ble Tribunal ought to have seen that the Hon'ble High Court in Crl.Appeal No. 1099/06, has only suspended the sentence and not the conviction of the respondent herein and as such, the

dismissal of the respondent herein basing on the judgment of the trial court convicting the respondent herein is in accordance with law.

15. I submit that in the case of N.C.Bhatt Vs. Controller, Food & Civil Supplies, reported in 1997 (8) SLR 76 and the referred cases therein, it is observed that dismissal or removal of a Government servant is not barred, once a Government

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servant is convicted, only the ground that the sentence has been suspended by the appellate court or upon the accused having been released on bail pending Appeal. The Hon'ble Court further held that the appropriate authority need not wait for decision in the Appeal filed against conviction. The Hon'ble Court also held that the term 'Conviction' occurring in Clause (a) of second proviso to clause (2) of Article 311 must be by a competent criminal court in the first instance. Therefore, once a conviction is recorded by the court at the first instance, it is open for the disciplinary authority to examine the conduct of an employee which has led to his conviction on a criminal charge and the authority is not required to wait for the decision of the Appellate or Revisional court.

16. I submit that the Hon'ble Tribunal ought to have seen that the action of the Department is as per law laid down by the Hon'ble Supreme Court in the cases of H.C.Sareen Vs. C.B.I., Chandigarh, reported in 2001 (5) Supreme 437, and the Director General, RPF Vs. Ch.Saibabu, reported in Supreme Today Journal 2003 (4) Supreme 313.

17. I submit that the order of the Hon'ble Tribunal is contrary to the decisions reported in the case reported in 1995 (3) SCC 337, and also in the case of Union of India Vs. Sri Ramesh Kumar 1997 (5) SCALE 660, 1997 (7) SCC 514, wherein it was held that when the appellate court suspends the execution of sentence and grants bail to an accused the effect of the order

is that the sentence based on conviction is for the time being postponed, or kept in abeyance during the pendency of the appeal. In other words, by suspension of execution of sentence under Section 389 CrI.PC, an accused avoids undergoing sentence pending criminal appeal. However, conviction continues and is not obliterated and any action taken against a Government Servant on a misconduct which led to his conviction by the court of law does not lose its efficacy merely because the appellate court has suspended the execution of sentence.

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18. I submit that the Hon'ble Tribunal ought to have seen that the Hon'ble Supreme Court in the case of Dy. Director of Collegiate Edn., Vs. S. Nagoor Mere, reported in AIR 1995 sc 1364, held that taking proceedings and passing orders of dismissal, removal or reduction in rank of a Government servant who has been convicted in a criminal court is not barred merely because the sentence or order is suspended by the appellate court or on the ground that the said Government servant accused had been released on bail pending the appeal .

19. I submit that the Hon'ble Tribunal ought to have seen that its orders are contrary to the instructions of the Government issued in Memo. No. 1621/Spl.B/1991-1, G.A. (Spl.B) Dept., dt. 26.11.2001, wherein it is stipulated that action has to be taken forthwith for dismissal of public servants convicted of corruption and criminal misconduct immediately upon such convicting without waiting for any orders in appeal.

20. The Hon'ble Tribunal ought to have seen that the Government have issued instructions in Circular Memo. No. 3824/Ser.C/1998-2, G.A. (Spl.C) Dept., dt. 09.02.98, stipulating that a delinquent Government servant who has been dismissed from service on the ground of misconduct which has led to his conviction on a criminal charge is not entitled for reinstatement service because a criminal appeal was filed by the

delinquent Government servant against his conviction and the appellate court has suspended the execution of sentence and the accused has been released on bail, pending the appeal.

21. The Hon'ble Tribunal ought to have seen that its orders are contrary to the Government orders issued in G.O.Ms.No. 2, Genl.Admn.Dept., dt. 04.01.1999.

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22. I submit that the Hon'ble Tribunal ought to have seen decision relied by it in allowing the O.A., is not applicable to the present facts and circumstances of the case.

23. I submit that the Hon'ble A.P. Administrative Tribunal has not appreciated the facts of the case in the proper perspective. Therefore, the order of the A.P. Administrative Tribunal is contrary to law, perverse and in excess of jurisdiction.

24. I submit that the petitioners have no other alternative and efficacious remedy except to approach this Hon'ble High Court under Article 226 of the constitution of India for necessary relief.

25. I submit that the petitioners have not filed any writ, suit or any other proceedings in any court, praying for the same relief.

It is, therefore, prayed that this Hon'ble Court may be pleased to issue a writ, order or a direction, more particularly one in the nature of Writ of Certiorari, calling for the records relating to the orders of the A.P. Administrative Tribunal passed in O.A.No. 5199/2006, dated: 05-11-2009, and quash the same as being perverse, in excess of jurisdiction and contrary to law and pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.

It is further prayed that this Hon'ble Court may be pleased to suspend the operation of the orders in O.A.No. 5199/2006, dated: 05-11-2009, on the file of the A.P.Administrative Tribunal, Hyderabad, pending disposal of the above writ petition and pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.

DEPONENT

Solemnly affirmed and signed
Before me on this the _____ day of
2009 at Hyderabad.

ATTESTOR

VERIFICATION

I, _____, S/o. _____, aged () years, residing at Hyderabad, working as the Commissioner of Commercial Taxes, A.P., Hyderabad, the deponent herein, do hereby declare that the facts stated in paragraphs 1 to 22 are true to the best of my knowledge, derived from perusing official records and the contents in paragraphs 23 & 24 are based on legal advice. Hence, verified this the day of , 2009 at Hyderabad.

Govt.Pleader for Services II

Deponent